IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Central Excise Appeal No.26 of 2005

The Commissioner of Central Excise,
Thane II. .. .. Appellant

V/s.

M/s.Star Insulation. .. .. Respondent

Mr.S.S.Pakale with Mr.Y.R.Mishra for appellant.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 17th November 2005

P.C. :

1. Heard Mr.Pakale in support of this Appeal.

2. This Appeal seeks to challenge the order dated 16th June 2004 passed by the Member (Technical), Customs, Excise and Service Appellate Tribunal, Mumbai in Appeal No.E/2767/1999. The Tribunal has reversed the order passed by the Commissioner. This is because the order passed by the Commissioner was not justified by the record. The matter was regarding the modvat benefit and the Tribunal has accepted the respondent's contention in Appeal that the so-called inputs found in its premises were purchased from open market and were not covered under any gate pass. The Tribunal has clearly held that the modvat credit was not taken over the

concerned inputs and, therefore, the question of reversal of credit does not arise. The Tribunal's finding is entirely based on the facts and the Tribunal was justified in reversing the order passed by the Commissioner. It is not possible to state that the Tribunal's order is, in any way, perverse and/or unjustified by the record. A suspicion cannot take place of proof and that is why the Tribunal has interfered with the order of the Commissioner. The questions of law sought to be raised in this background do not arise in the facts of the present case.

3. In the circumstances, the Appeal is dismissed.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)